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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/270,768	03/17/1999	ALASTAIR SIBBALD	3017/47588	2922

40032 7590 08/29/2005

CREATIVE LABS, INC.
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EXAMINER

GRAHAM, ANDREW R

ART UNIT	PAPER NUMBER
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2644

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/270,768	Applicant(s) SIBBALD ET AL.	
	Examiner Andrew Graham	Art Unit 2644	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: please see attached response.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.


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Response to Arguments

Applicant's arguments filed 8/5/05 have been fully considered but they are not persuasive.

On page 8, lines 2-8, the applicant has stated, "This gain to at least one channel, even if direction dependant, in turn means that the method in Gardner cannot teach HF cut filtering in both channels as required by claim 1" and thus "Gardner fails to teach or suggest all of the elements of claim 1, including augmenting the HRTF filtering of the signal in both channels using high frequency (HF) cut filter means". The examiner respectfully submits that the claim language in question does not support such a requirement of "HF cut filtering in both channels". The pertinent claim language is "augmenting the HRTF filtering... using high frequency (HF) cut filter means". The use of such HF cut filter means does not inherently mean that HF cut filtering is performed by said means, as is evidenced by the applicant's argument, which alleges that the shelving or low pass filters (equated to the HF cut filter means) of Gardner apply a high frequency gain and, as such, do not perform HF cut filtering. Even if, for the sake of argument, it is agreed that the shelving or low pass filters of Gardner do not perform HF cut filtering, as is alleged by the applicant, the inclusion of such filters in the signal processing path of Gardner meet the required limitations of "augmenting... using high frequency (HF) cut filter means".

It is further noted that Gardner does not teach or suggest that the applied and adjusted gains (g_1, g_r) are equal or greater than one

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(col. 17, lines 21-36). To not be "HF cut filtering", the gain of the HF signals would have to be equal or greater than one, and thus not 'cutting' or 'decreasing' the amplitude of such frequencies. Gardner gives equations for determining the gains and in terms of actual value, does note that the gain may be set to zero (col. 16, lines 49-67). A teaching or suggestion of a gain greater than one is not presented. On the other hand, the standard signal processing of a low pass filter at least involves attenuating the gain of high frequencies above a cutoff frequency, and such processing is not explicitly or implicitly obviated by the denoted adjustability of the ultimately applied high frequency gain. As such, the teachings of Gardner do not teach or suggest the notion that HF cut filtering is absent from the signal processing of the shelving or low pass filters, even when the gains are adjusted.

Further arguments upon different grounds are not further presented by the applicant in the remaining portions of pages 7-9. Accordingly, in view of the response listed above, it is respectfully submitted that the remarks received 8/5/05 are not persuasive.

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8.25.05